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August 14, 2000

Docket Clerk
United States Environmental Protection Agency
Region III
1650 Arch Street,
Philadelphia, Pennsylvania 19103

In Re: Butler Mine Tunnel Superfund Site, Pittston Township, Luzerne County, Pennsylvania
U.S. EPA Docket No. CERC-DEM-2000-01

To Whom It May Concern:

Alcan Aluminum Corporation ("Alcan") hereby objects to the proposed "Administrative Order on Consent for De Minimis Settlement" published in the Federal Register on July 17, 2000, pursuant to 42 U.S.C. §9622(i)(2) and (3) on the grounds that the proposed settlement is "inappropriate, improper, or inadequate." and subverts the objectives of CERCLA.

I. INTRODUCTION

The proposed Order provides for a payment of $4,000.00 for release of the City of College Park ("College Park") from further liability and to acquire contribution protection from third parties in relation to waste deposited at the Butler Mine Tunnel Site in Pittston, Pennsylvania. If the EPA adopts this Order, it would do so in violation of the objectives of CERCLA, and would unfairly prevent Alcan and other PRPs from pursuing College Park for contribution. These two points alone make the proposed settlement inappropriate, improper, and inadequate. First, The data relied upon by the EPA contains information related solely to volume of waste delivered to the Butler Site by College Park. No toxicity analysis was done. Second, because the total volume of Alcan waste has far less mass of CERCLA hazardous substances than the College Park oil, is far less toxic and contained none constituents that actually required remediation at the Butler site while College Park's contained three such constituents, this proposed settlement is inconsistent with both the purpose and principles of CERCLA.

II . FAILURE TO COMPLY WITH APPLICABLE STANDARD

The EPA failed to meet the standard of review in this proposed Order by failing to perform an analysis that would promote determination of liability on a volumetric and toxicity basis as required under 42 U.S.C. § 9622 (g)

The EPA must demonstrate that College Park's waste contains less hazardous substances *and* is less toxic than the Alcan waste (or other PRP's waste) sent to the Butler Site. In In *de minimis settlements*, 42 U.S.C. §9622(g) provides that *in addition to volumentric assessment,* "...the conditions in either of the following subparagraph (A) or (B) are met: (A) Both of the following are minimal in comparison to other hazardous substances at the facility: (i) The amount of the hazardous substances contributed by that party to the facility. (ii) The toxic or other hazardous effects of the substances contributed by that party to the facility."

The EPA, Region III failed to comply with the above quoted portion of this statutory provision. Even though College Park did not provide the EPA with toxicity analysis, the EPA can easily access this information through publicly available data via the Internet or similar research tools available to it. Such resources show the chemical characteristics of used motor oil similar to that transported from the underground storage tank used by College Park.

Using this information, EPA could easily compare the characteristics of the College Park oil with the characteristics of the Alcan waste Emulsion which had been known to it for years, and which it claimed before series of federal courts there was no plausible basis for establishing divisible harm. Such an analysis was done by Alcan and is reflected in Appendix A.[1] The chart shows chemical constituents of used motor oil (College Park's waste) and the Alcan water/oil waste sent to Butler. As the chart demonstrates the smaller volume of College Park waste still has over 13 times more mass of hazardous constituents. The College Park waste stream is over 17 times more toxic and what is most important the College Park stream alone contains the chemicals that were in fact identified at the site and required remediation.

III. CONCLUSION

Since the diminimis classification is by definition a methodology for establishing divisible harm, the EPA actions with respect to this settlement are unfair and inconsistent. This proposed settlement demonstrates a lack of candor before the courts of the EPA and the Department of Justice who have routinely represented that the character of the Alcan

[1] The metal compounds in the Alcan emulsion are in compound form and not EP toxic. This is unlikely to be the case for the metals in the motor oil are far more likely to be in soluble form, and thus pose a far greater hazard. The chart, therefore, over states the relative toxicity of the Alcan emulsion.

waste was such that it was impossible to establish divisible harm. Yet as this situation further demonstrates they routinely treat waste streams, including their own, which are far more adverse on every toxicity parameter as easy divisible with respect to harm, and give them favorable treatment. Then they use a plaint judiciary to transfer the shortfall in remediation to innocent parties.

Very truly yours,

Lawrence A. Salibra, II
Senior Counsel

LAS:smh

Alcan Waste Emulsion Alleged Hazardous Components vs. College Park Waste (Used Automotive Oil)

	Alcan		College Park			Quantity disposed at Butler		EPA MCL	Toxicity Equivalents (1/MCL X Quantity)	
	Volume gal.	Conc. ppm	Volume gal.	Conc. ppm		Alcan Mass lb.	College Park Mass lb.	(mg/l)	Alcan	College Park
Arsenic	35,000	0	300	18	**	0.00	0.04	0.05	0.0	0.8
Lead	35,000	0.9 *	300	1200	**	0.26	2.52	0.015	17.4	168.0
Cadmium	35,000	0.84 *	300	10	**	0.24	0.02	0.005	48.8	4.2
Copper	35,000	2.27 *	300	4	***	0.66	0.01	1.3	0.5	0.0
Chromium	35,000	0.99 *	300	35	**	0.29	0.07	0.1	2.9	0.7
Zinc	35,000	3.34 *	300	1130	**	0.97	2.37	5	0.2	0.5
Benzene	**35,000**	**0.0**	300	300	**	**0.00**	**0.63**	**0.005**	**0.0**	**126.0**
Toluene	**35,000**	**0.0**	300	4500	**	**0.00**	**9.45**	**1**	**0.0**	**9.5**
Xylenes	**35,000**	**0.0**	300	3200	**	**0.00**	**6.72**	**10**	**0.0**	**0.7**
Tetrachloroethylene	35,000	0.0	300	1600	**	0.00	3.36	0.005	0.0	672.0
1,1,1-Trichloroethane	35,000	0.0	300	3200	**	0.00	6.72	0.2	0.0	33.6
PCB	35,000	0.0	300	5	**	0.00	0.01	0.0005	0.0	21.0
Dichloromethane	35,000	0.0	300	NA		0.00	0.00	0.005	0.0	0.0
Benzo(a)pyrene	35,000	0.0	300	16	**	0.00	0.03	0.0002	0.0	168.0
Density - lb/gal	8.3		7							
TOTAL MASS OF HAZARDOUS SUBSTANCES						2.42	31.92			
TOXICITY EQUIVALENTS									70	1205

Consent Order Constituents are in bold

* Hazardous substances that were the basis for the imposition of joint and several liability at the Butler Tunnel site

** 90th percentile concentration from "Composition and Management of Used Oil Generated in the United States, USEPA, Nov. 1984, EPA/530-SW-013

*** From http://www.aeha.com/ASP/publications/t.../1_UsedAutomotiveMotorOil%28Table19%29.rtf.htm